

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1093 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

SHRINATH CORPORATION

Versus

MARUTI LAND DEVELOPMENT CORPN

Appearance:

MR SURESH M SHAH for Petitioners
MR JR NANAVATI for Respondent No. 1
Respondent No. 4 served
NOTICE NOT RECD BACK for Respondent No. 7

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 03/07/97

ORAL JUDGEMENT

1. This Civil Revision Application filed by the original plaintiffs is directed against the judgment and order of 11th of August, 1992 passed by Joint Civil Judge, Junior Division, Amreli. It appears that in the suit filed by the plaintiffs for declaration and

injunction against the defendants, he assessed the court fee under Sec. 6(IV)(J) of the Bombay Court Fees Act and paid the court fee of Rs.30/- and on the valuation of the suit at Rs. 300 also, according to him, the court fee payable was Rs. 30/-. The defendants in the suit by application at Exhibit 91, inter alia, contended that the suit was under valued and that the court fee payable was Rs. 8,800/- because the value of the suit property was Rs. 6,50,000/-. The Court Fee Inspector while inspecting the plaint and determining the amount of court fee payable on the plaint based on the relief prayed, found that the court fee paid was just and proper. The amount of court fee payable is to be determined by the Court Fee Inspector under the provisions of the Bombay Court Fees Act and in case of objection by the party, it is for the court to direct the Court Fee Inspector to ascertain the amount of court fee payable on the basis of the relief claimed. The court fee is a fee for the services rendered and it is not revenue or tax. Therefore, if the Court Fee Inspector does not take any objection to the court fee assessed and paid by the plaintiffs, it is not for the defendants to raise the dispute and for the court to call upon the party to pay the deficit court fee. In the present case, the trial court has taken the view that the court fee was payable under Section 6(IV)(d) and the suit was required to be valued at Rs. 6,50,000/-. Even if such a view was right and correct in law, he could have called upon the Court Fee Inspector to determine the court fee on the basis of the real nature of the suit and he could not have called upon the party to pay the deficit court fee. Whether the prayer claimed in the plaint is one which falls under Section 6(IV)(d) or Section 6(IV)(J) of the Bombay Court Fees Act, would be determined either by the Court Fees Inspector or by the court after making enquiry as to whether the valuation of the property is correctly assessed or not, and in the present case, admittedly, the declaration of ownership of property is also claimed.

2. In that view of the matter, the order passed by the trial court dated 11th August, 1992 is not maintainable and it is liable to be quashed and set aside and is hereby quashed and set aside and the matter is remanded to the Court Fee Inspector to decide in accordance with law as to under which clause the court fee would be assessable and as to what would have been the valuation of the property on the date on which the suit was filed. He would also decide as to what would be the court fee payable and the plaintiffs shall thereafter comply with the order of the Court Fee Inspector subject to his right for challenging such order, if permissible,

under the law. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

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